*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.5954 OF 1997

% 19-12-2006

1. Bonthu Satyanarayana & 33 others. .. PETITIONERS

Versus

$The Mandal Revenue Officer,
Kakinada, East Godavari District
and 2 others. .. RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for petitioners: Sri V.L.N.Gopala Krishna Murthy

^ Counsel for respondents 1 & 2: G.P. for Land Acquisition

Counsel for respondent No.3: Sri M.Ramachandra Rao.

?CASES REFERRED :

1. AIR 1966 Supreme Court 828
2. AIR 1996 Supreme Court 122
3. AIR 1970 Supreme Court 1576
4. AIR 1975 Supreme Court 1767
5. AIR 1966 Supreme Court 1593
6. (2005) 1 Supreme Court Cases 558
7. 1979(1) ALT 59 NRC
8. 1979(1) ALT 65
9. 1980 (1) Kar.L.J. 191
10. 1993(3) ALT NRC 47

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THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.5954 OF 1997

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Date: 19th December 2006

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Between:

1. Bonthu Satyanarayana, s/o Subba Rao,
   aged 32 years, resident of Venkatarapuram,
   Kakinada Rural Mandal, Kakinada,
   East Godavari District and 33 others.

… Petitioners.

And

1. The Mandal Revenue Officer,
   Kakinada, E.G.District and 2 others.

… Respondents.

* * *

ORDER:

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The writ petition is filed for a writ of Mandamus declaring the notice Ref.(B-2) 374/96, dated 20.9.1996, issued by the Mandal Revenue Officer, Kakinada (Rural) and the Notification Ref.L-1/6871/93, dated 19.12.1996, issued by the Collector, East Godavari District, Kakinada, as illegal and void and direct the respondents 1 and 2 to desist from giving effect to the same and

pass such other suitable orders.

2. Sri V.L.N.Gopala Krishna Murthy, learned counsel representing the writ petitioners had taken this Court through the contents of the affidavit filed in support of the writ petition and would maintain that when once possession is taken, the question of invoking Section 48 of the Land Acquisition Act, 1894 (hereinafter in short referred to as 'the Act' for the purpose of convenience) would not arise. The learned counsel placed strong reliance on several decisions to substantiate this stand taken by him. The learned counsel also pointed out that even prior orders of this Court had not been properly understood and any way concerned authorities had misunderstood the said orders. The learned counsel also would submit that even if the stand taken by the third respondent to be accepted that the owner's name was not shown in the notification under Section 4(1) of the Act aforesaid that would not vitiate the proceedings as such, and hence, it cannot be said that possession was not taken and in view of the specific stand taken by the Government that possession had been taken, invoking the power under Section 48 of the Act would not arise and inasmuch as the said action being one without jurisdiction, the same is liable to be set aside. The learned counsel also placed strong reliance on certain decisions to substantiate this stand taken by him.

3. Learned Government Pleader for Land Acquisition had taken this Court through the contents of the counter-affidavit and would maintain that it is no doubt true that stand had been taken that

possession had been taken, but however to certain eligible persons already some alternative sites had been allotted and to certain ineligible persons the same was not given. The learned Government Pleader also would submit that in the light of the prior proceedings, the action of the government cannot be found fault in any way, especially, in the peculiar facts and circumstances of the present case.

4. Sri M.Ramachandra Rao, learned counsel representing R-3 had taken this court through the counter-affidavit filed by R-3 and would maintain that the present writ petitioners, the alleged beneficiaries, have no *locus standi* at all, since eligible persons already had been allotted alternative sites and in that view of the matter these petitioners cannot be said to be in any way aggrieved persons so as to challenge the present action. While further elaborating the submissions, the learned counsel would maintain that taking possession may have to be understood as taking possession in accordance with law. The learned counsel pointed out that in the present case inasmuch as there is specific stand taken even by the government that urgency clause had been invoked, the mode of taking possession would be to further proceed in accordance with Section 9 of the Act and the counsel also would submit that notice to owner under Section 9 of the Act being mandatory, it can be said that the mandatory provisions or mandatory procedure specified by the Act had not been followed and in view of the same this cannot be styled as possession in accordance with law and in view of the same, in fact, all the other proceedings are vitiated inclusive of the proceeding of the

withdrawal under Section 48 of the Act. The learned counsel placed reliance on certain decisions in this regard. While further elaborating the submissions, the effect of setting aside the order also may have to be taken into consideration. It is not as though in every matter the extraordinary discretionary powers of this Court under Article 226 of the Constitution of India to be invoked. The learned counsel would point out that the effect of setting aside of these orders would be in effect reviving certainly other illegal orders which were made definitely not in accordance with the provisions of the Act. Hence, this aspect also may have to be kept in view while deciding the matter. The learned counsel placed strong reliance on the decision in **Gadde Venkateswara Rao V. Govt. of Andhra Pradesh and others**[1].

5. Heard the counsel.

6. The second respondent issued a notification under Section 4(1) of the Act bearing Ref.No.L5, 61/84, dated 22.1.1984 published in East Godavari District Gazette (Extraordinary) dated 22.1.1984, proposing to acquire a total extent of Ac.6-32 cents belonging to various landholders including Ac.1-73 cents in survey No.187 of Panduru village, Kakinada Taluk. Questioning the said notification, five of the landholders filed W.P.No.4012 of 1984. The Backward Class Agricultural Cooli Sangham, Venkatapuram village, impleaded itself as second respondent in the said writ petition and the said writ petition was allowed by an order dated 17.01.1986 on the ground that the petitioners were small farmers.

It is stated that the third respondent, who claims to be entitled to an extent of Ac.1-81 cents in survey No.187, did not question the said notification initially. It is also stated that the third respondent subsequently filed W.P.No.18335 of 1988 for issuance of a writ of Certiorari to quash the very same notification and it is averred in the said writ petition that the third respondent owned Ac.1-71 cents in survey No.187 of Panduru village having purchased the same from one Devulapalli Kameswaramma under a registered sale deed in the year 1971 and has been in possession and enjoyment of the same and he is also a small farmer and he was not aware of the acquisition proceedings and W.P.No.4012 of 1984 was allowed, and hence, he is entitled for re-delivery of the said land in survey No.187 aforesaid. The said writ petition was disposed of by an order dated 12th March 1996 observing as hereunder.

> " Considering the above facts and circumstances, this Court directs the respondents to identify as to whether the land in dispute in this writ petition was also the subject matter of W.P.No.4012 of 1984 and whether Sec.4(1) of Notification issued in respect of the land in dispute was quashed by this Court, and proceed in accordance with law, by taking appropriate steps.
>
> With the above observations, this writ petition is disposed of. No costs."

7. Further specific stand is taken that possession of the land in question was taken on 11.4.1984 and 34 pattas were granted to eligible beneficiaries on 15.8.1985 and the layout was re-laid on ground and possession also was given to the pattadars. Further specific stand is taken that all the beneficiaries had been made

constructions of thatched houses. But, however, in a recent fire accident, the houses were gutted. It is also further stated that the Mandal Revenue Officer, Kakinada issued notices to various beneficiaries on 20.9.1996 and the said notice reads as hereunder.

> " Pattas in respect of house sites in Ac.1-73 cts. in Survey No.187 of Venkatapuram, H/o.Pandur village were granted to you in the year 1985 and the land has been handed over to you. As per the conditions of the said patta, houses were to be built within 3 months from the date of issuance of the patta. But you have not built the house in the said site and occupied the same. Subsequently Sri K.Veerraju filed W.P.No.18335 of 1988 in the Hon'ble High Court and judgment was delivered on 12-3-1996. For the above said reasons the said land has to be redelivered to the pattadar. There are proposals to acquire land in the adjacent R.S.No.195/2 as an alternative and to grant house site pattas on the basis of eligibility. You shall intimate your consent in this regard to this office within 7 days from the date of receipt of this notice. In default, further action will be taken on the basis that you have agreed to the above proposal."

Subsequent thereto a notification under Section 48(1) of the Act was issued de-notifying the acquisition of Ac.1-73 cents in survey No.187 standing in the name of Anasuri Venkataramana. The petitioners being aggrieved of the said proceedings referred to supra filed the present writ petition.

8. A counter-affidavit in detail is filed by the respondents 1 and 2. It is stated that the draft notification was issued by the Collector, East Godavari District, dated 22.1.1984 in Ref.L1/61/84, invoking urgency clause for acquisition of the following land

measuring Ac.6-32 cents covering in survey Nos.183 to 188, situated in Panduru village of Kakinada Mandal for providing house sites.

Survey No.	Extent
183	Ac. 0-20 cents
184	0-76
185	0-74
186	0-78
187	1-73
188	2-11
	6-32

It is also averred in paragraphs 3 and 4 of the counter-affidavit that the draft declaration under Section 6 of the Act was also approved on 04.2.1984 and got published as per rules. At the time of taking possession of the land, after observing usual formalities under the Act, the land owners, except in survey No.187 filed W.P.No.4012 of 1984 against the draft notification of the proposed acquisition and obtained stay orders in W.P.M.P.No.5100 of 1984 dated 24.02.1984. It is also stated that since the land owner of Ac.1-73 cents in S.No.187 did not file writ petition and that land is not covered by any stay orders, it was taken possession on 11.4.1984 and house site pattas were granted to 34 beneficiaries on 15.8.1985 and possession was also given to the beneficiaries on 7.9.1985. The Writ Petition No.4012 of 1984, filed by the other landowners, was allowed and 4(1) notification was quashed by an order dated 17.1.1986. Later K.Veerraju, land owner of Ac.1-73

cents in survey No.187 had filed W.P.No.18335 of 1988 on the contention that the land which was taken possession from him was also the subject matter of the W.P.No.4012 of 1984 in which 4(1) notification was quashed by this court and he obtained stay orders from this court in W.P.M.P.No.23483 of 1988 dated 27.12.1988. The said Writ Petition No.18335 of 1988 was disposed of on 12.3.1996 directing the respondents (viz., Collector and Revenue Divisional Officer, Kakinada) to identify as to whether the land in dispute in W.P.No.18335 of 1988 was also the subject matter of W.P.No.4012 of 1984 and whether Section 4 (1) notification issued in respect of the land in dispute was quashed by this court and to proceed in accordance with law by taking appropriate action. As per the orders of this Court, the landowner K.Veerraju had filed petition requesting to handover the possession of Ac.1-73 cents.

9. Further it was averred in paragraph 5 of the counter-affidavit that the then Revenue Divisional Officer, Kakinada inspected the lands including the land in dispute and found that the land is low lying and it requires levelling upto 4 feet to bring the land for construction of houses and there is no approach road to the land in question. The then Revenue Divisional Officer, Kakinada submitted a report to the Collector, Kakinada, on 11.10.1996 stating that the writ petitioner's land in survey No.187 is the subject matter of the draft notification under Section 4(1) which was quashed by this Court in W.P.No.4012 of 1984, as such if the land has to be acquired, again fresh land acquisition proposals had to be initiated for which interest is to be awarded from the date of taking possession of the subject land i.e., on 11.4.1984, if so, the

cost of land become higher and also the land is required for only 21 eligible beneficiaries out of 34 persons who were granted house site pattas in August, 1985. It is further averred that the beneficiaries had not made any improvements to the land in question though it was 10 years that house site pattas were granted to 34 beneficiaries and the Collector, Kakinada in Ref.L1/6871/93, dated 28.10.1996 issued instructions to send withdrawal proposals for Ac.1-73 cents of the land and to cancel the pattas already granted. Accordingly, the withdrawal notification under Section 48 of the Act was approved by the Collector vide Ref.L1/6871/93, dated 19.12.1996 and published in District Gazette as per rules and the Mandal Revenue Officer, Kakinada issued notice to the beneficiaries vide Ref.B2/374/96, dated 20.9.1996, informing that in view of the directions of this Court, the land had to be re-delivered to the owner and since the beneficiaries had not constructed houses within time, they violated the patta conditions. However, there were proposals for providing house sites in survey No.195/2 and to give their explanation within 7 days. After due course of enquiry, the pattas granted were cancelled by the Mandal Revenue Officer, Kakinada, vide D.Dis.B2/374/96, dated 28.1.1997 and the land Ac.1-73 cents was re-delivered to the land owner K.Veerraju by the Mandal Revenue Officer, Kakinada on 29.1.1997 since the land owner had given sworn in affidavit stating that he would not claim mesne profits from the land taken possession by the Government. It is further stated that the eligibility of 34 beneficiaries who were granted house sites earlier in the year 1995 were examined and found 21

beneficiaries to be eligible and they were provided with alternate sites vide Ref.B2/350/99, dated 01.07.1999 of the Mandal Revenue Officer, Kakinada and the remaining 13 beneficiaries who are the petitioners of the present writ petition are not eligible and hence they were not provided with house sites.

10. It was also further averred in paragraphs 6 and 7 of the counter-affidavit that draft notification under Section 4(1) of the Act was issued vide reference already referred to supra and the draft declaration under Section 6 of the Act was also approved on 04.02.1984 and got published as per the rules. Taking possession of the land after observing usual formalities under the Act, the land owners except in survey No.187, filed W.P.No.4012 of 1984 against the draft notification of the proposed acquisition and obtained stay order in W.P.M.P.No.5100 of 1984 dated 24.02.1984. It is also averred that since the land owner of Ac.1-73 cents in survey No.187 did not file writ petition and the same was not covered by the stay order, it was taken possession on 11.4.1984 and house site pattas were granted to 34 beneficiaries on 15.8.1985 and possession was also given to the beneficiaries on 07.9.1985. W.P.No.4012 of 1984 filed by other landowners was allowed quashing 4(1) notification by an order dated 17.01.1988. Further it was averred in paragraph 9 of the counter-affidavit that K.Veerraju, land owner of Ac.1-73 cents in survey No.187 had filed W.P.No.18335 of 1988 on the contention that the land which was taken possession from him was also the subject matter of the W.P.No.4012 of 1984 in which 4(1) notification was quashed and several other factual details in relation to the prior writ proceedings

also had been referred to.

11. Specific stand is taken that on 11.4.1984 possession, in fact, had been taken. It was also averred in paragraph 11 of the counter-affidavit that in pursuance of the orders of this Court dated 12.3.1996 in W.P.No.18335 of 1988 filed by K.Veerraju since the beneficiaries who were granted house site pattas had not occupied the plots, a notice dated 20.9.1996 was issued by the Mandal Revenue Officer, Kakinada, to the beneficiaries stating the court direction and calling upon for their consent for provision of house sites in the alternative land in survey No.196/2 failing which further action will be taken on the basis that they had consented. But they refused to receive the notice and not given any explanation. On enquiry into the eligibility of 34 beneficiaries, 21 were found eligible and they were provided with alternate house sites and the remaining 13 ineligible persons were not provided with house sites in view of the reasons mentioned hereunder.

S.No.	Name of the writ petitioner who was not granted house site patta	Reasons for ineligibility
1.	Bonthu Satyanarayana, S/o Subbarao	Possessed own house Asst. No.15
2.	Gubbala Krishna, S/o Kamaraju	Possessed own house Asst. No.47
3.	Pampana Venkatarmana, S/o Apparao	Details not known as not residing in the village
4.	Tolem Apparao, S/o Naganna	Possessed own house and Ac.0-50 cents land.
5.	Koppisetti Sathyanarayana, S/o Suryarao.	Possessed Ac.1-00 of land and house Asst. o.43
6.	Penkey Rambabu, S/o Suryarao	Above income group
7.	Kadiyala Satyanarayana, S/o Sathiraju	Possessed thatched house

8.	Penkey Narayana, S/o Pentayya	Possessed own RCC building
9.	Koppisetti Nagabhushnam, S/o Gangaraju	Possessed own site for construction of house
10.	Chintapally Venkataramana, S/o Nookaraju	Possessed own thatched house.
11.	Chintapally Venkataramana, S/o Sathiraju.	Possessed own house Asst.No.54.
12.	Uppulu Ammayamma	Not residing in the village
13.	Bhagati Naganeni,	Not residing in the village

Further it was averred in paragraph 12 of the counter-affidavit that the Collector, Kakinada in Ref.L1/6871/93, dated 28.10.1996 issued instructions to send withdrawal proposals for Ac.1-73 cents of land and to take action for assigning the government land to eligible beneficiaries by cancelling the pattas issued earlier and accordingly the withdrawal notification was approved and issued by the Collector, Kakinada vide Ref.L1/6871/93, dated 19.12.1996 and the house site pattas issued were cancelled vide Mandal Revenue Officer's D.Dis.B2/374/96, dated 28.01.1997, and alternate house sites also issued to the eligible beneficiaries and thereupon the land was re-delivered to Koppisetti Veerraju, since Anasuri Venkataramana whose name was mentioned in 4(1) notification filed sworn in affidavit that the land belongs to Veerraju and that his name was wrongly noted in the notification and he is nothing to do with the subject land.

12. Further specific stand is taken that in pursuance of the order of this Court dated 12.3.1996 in W.P.No.18335 of 1988 since the land was taken possession, the land measuring Ac.1-73 cents was

re-delivered to the land owner and withdrawal notification was approved and issued by the Collecor, Kakinada under Section 48 of the Act.

13. It is also further stated in paragraph 14 of the counter-affidavit that this Court by an order dated 12.3.1996 issued directions and accordingly the then Revenue Divisional Officer, Kakinada, inspected the lands including the land in dispute and found that the land is low lying and it requires levelling upto 4 feet to bring the land for construction of houses and there is no approach road to the land in question, and submitted a report to the Collector, Kakinada on 11.10.1996 requesting instructions stating that the writ petitioner's land in S.No.187 is the subject matter of the draft notification under Section 4(1) which was quashed by this Court in W.P.No.4012 of 1984, as such if the land has to be acquired, again fresh land acquisition proposals had to be initiated for which the interest is to be awarded from the date of taking possession of the subject land i.e., on 11.4.1984, if so, the cost of land becomes higher; and also the land is required for only 18 eligible beneficiaries out of 34 persons who were granted house site pattas in August 1986. The beneficiaries had not made any improvement to the land in question though it was 10 years that house site pattas were granted to 34 beneficiaries. The Collector, Kakinada in Ref.L1/6871/93, dated 28.10.1996 issued instructions to send withdrawal proposals for Ac.173 cents of the land and to cancel the pattas already granted. Accordingly, the withdrawal notification under Section 48 of the Act was approved by the Collector vide Ref.L1/6871/93, dated 19.12.1996 and published in

District Gazette as per Rules. It is also averred that the land in Ac.1-73 cents was re-delivered to the land owner K.Veerraju by the Mandal Revenue Officer, Kakinada on 29.01.1997, since the land owner had given sworn in affidavit stating that he would not claim mesne profits from the land taken possession by the government and after that the eligibility of 34 beneficiaries who were granted house sites earlier in the year 1995 were examined and found 21 beneficiaries to be eligible and they were provided with alternate sites vide Ref.B2/350/99, dated 01.7.1999 of the Mandal Revenue Officer, Kakinada and the remaining 13 beneficiaries who are the petitioners of the present writ petition are not eligible and hence they were not provided with house sites.

14. Further specific stand is taken in paragraph 15 of the counter-affidavit that since the beneficiaries had not constructed houses in the house sites, the Mandal Revenue Officer, Kakinada issued notices to the beneficiaries, moreover they were also provided with alternate lands also and further the action of the Mandal Revenue Officer was only in pursuance of the directions made by this Court.

15. The third respondent filed counter-affidavit stating that the third respondent purchased the property in question from Kameswaramma under a registered sale deed in the year 1971 and in the original sale deed there was some mistake and subsequent thereto a rectification deed was also obtained. Further specific stand was taken by R-3 that in the notification under Section 4(1) of the Act the name was wrongly shown as one

Anasuri Venkataramana. The prior W.P.No.4012 of 1988 filed and the order made in the said writ petition and the other details also had been referred to in paragraphs 4 and 5 of the counter-affidavit of R-3. The conducting of further enquiry and issuance of proceedings relating to withdrawal of the acquisition under Section 48 (1) of the Act and the re-delivery made also had been averred. Further, the other factual details narrated at length in the counter-affidavit of R-1 and A-2 again had been reiterated even by R-3.

16. The learned counsel representing the writ petitioners placed strong reliance on the decisions in **Awadh Bihari Yadav and others V. State of Bihar and others**[2]; **Lt. Governor of Himachal Pradesh and another V. Sri Avinash Sharma**[3]; **Balwant Narayan Bhagde V. M.D.Bhagwat and others**[4]; **The State of M.P. & others V. Vishnu Prasad Sharma and others**[5]; and **Govt. of A.P. and another V. Syed Akbar**[6] and would contend that when once possession had been taken by the government, the question of invoking power under Section 48(1) of the Act would not arise. There cannot be any doubt or dispute relating to this proposition this being well settled by several decisions of the Apex court. Further strong reliance was placed on a decision in **Smt P.Choudrani and another V. District Social Welfare Officer (L.A.), Cuddapah**[7] and in **Vajja Koteswara Rao and others V. The Govt. of A.P., reptd. By its Secretary, Social Welfare Dept. and others**[8] and submissions

were made that mere non-mentioning of the name of the alleged real owner, the third respondent, a notification under Section 4(1) of the Act as such would not be vitiated.

17. On a careful analysis of the factual matrix and series of events, it appears that the other landholders approached this Court by filing W.P.No.4012 of 1984 and got the notification under Section 4(1) of the Act quashed. The third respondent evidently for the reason that his name was not shown in the 4(1) notification or for the reason that he had no knowledge had not challenged the same at the appropriate time and subsequent thereto the third respondent filed W.P.No.18335 of 1988 and the order made by this Court, especially, in the light of the prior order, already had been referred to supra. Taking possession of the property under the provisions of the Act, the vesting and divesting of the property to be in accordance with procedure to be followed as mandated by the different provisions of the Act. May be certain acts though procedural being mandatory are strictly to be observed.

18. It is brought to the notice of this Court that invoking the urgency clause the further proceedings had been taken under the Act. It is needless to say that it is well settled proposition that notice under Section 9 of the Act to the owner or even the aggrieved or the affected party being mandatory, in violation thereof if further proceedings had been taken, this Court is of the considered opinion that such possession is not to be treated as possession in the eye of law. It is no doubt true that subsequent thereto much water had flown. It appears that in pursuance of the

said proceedings, the government asserting that possession had been taken, had made certain allotments and in pursuance of the directions made by this Court and also in the light of the subsequent events, may be on the ground of eligibility or ineligibility of the beneficiaries and also on the ground of non-compliance of the conditions, certain further proceedings had been initiated. The learned counsel representing the third respondent placed strong reliance on the decision in **Muninanjappa V. State of Karnataka**[9] and also the order dated 30.7.1993 in W.P.Nos.11296 and 10357 of 1990 in between **Govt. of A.P. V. L.A.O. & M.R.O. Hanamkonda**[10]. It is pertinent to note that in the said decision the learned judge of this Court observed that Section 48 of the Act does not permit the government to withdraw its acquisition, if the possession was taken over under the Act and bar for withdrawal of acquisition of the plot the possession was not taken over by following the provisions of the Act and strict interpretation is warranted. Further, strong reliance was placed on the decision of the Apex court in Gadde Venkateswara Rao V. Govt. of Andhra Pradesh and others (1 supra) wherein the Apex court observed that where the effect of quashing of an order may result in the restoration of an illegal order, the court may decline to exercise its power under Article 226 of the Constitution of India. Apart from all these aspects, on a careful balancing of all the facts involved in the case, this court is of the considered opinion that in the light of the clear specific stand taken by the respondents 1 and 2 relating to the series of events which ultimately led to the re-delivery and also taking into consideration that the interference by

this Court at this stage would result in reviving of the prior proceedings not in accordance with law this court is of the considered opinion that this is not a fit matter to be interfered with, especially in the light of the stand taken that some alternate sites had been allotted to the eligible beneficiaries and it is doubtful whether these petitioners are eligible or ineligible. It is needless to say that these are factual aspects to be verified by the appropriate authorities.

19. Hence, the writ petition being devoid of merit, the same shall stand dismissed. In view of the peculiar facts and circumstances, no order as to costs.

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P.S.NARAYANA, J.

Date: 19th December 2006

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L.R. Copy to be marked.

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[1] AIR 1966 SUPREME COURT 828

[2] AIR 1996 SUPREME COURT 122

[3] AIR 1970 SUPREME COURT 1576

[4] AIR 1975 SUPREME COURT 1767

[5] AIR 1966 SUPREME COURT 1593

[6] (2005) 1 SUPREME COURT CASES 558

[7] 1979(1) ALT 59 NRC

[8] 1979(1) ALT 65

[9] 1980 (1) Kar.L.J. 191

[10] 1993(3) ALT NRC 47